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**TRANSPARENCY AND CONSULTATION ON TRADE AND ENVIRONMENT IN FINLAND
NATIONAL CASE STUDIES**

Ms Cristina Tébar Less, tel.: (33-1) 45 24 18 51; fax (33-1) 45 24 78 76;
e-mail: cristina.tebar-less@oecd.org

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TRANSPARENCY AND CONSULTATION ON TRADE AND ENVIRONMENT IN FINLAND

Introduction

1. This report is based on exchanges with officials of the Finnish Ministries for Foreign Affairs, Environment, and Trade and Industry, and of the Grand Committee of the Finnish Parliament. Further, representatives of the following organisations were interviewed: the Finnish Association for Nature Conservation; the Service Center for Development Co-operation (KEPA); Friends of the Earth; the Confederation of Finnish Industry and Employers; Forest Industries and the Central Organisation of Finnish Trade Unions (SAK).

Background

2. Finland has a long democratic tradition, and both transparency and consultation with civil society in public decisions date back many years.

3. In accordance with the new Finnish constitution, which entered into force on 1 March 2000, everyone has the freedom of expression, this freedom including the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. The Constitution further provides that documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act, and that everyone has the right of access to public documents and recordings.

4. On environment related issues, the Constitution states that nature and its biodiversity, the environment and the national heritage are the responsibility of everyone, and that the public authorities shall endeavour to guarantee for everyone the right to a healthy environment, and for everyone the possibility to influence the decisions that concern their own living environment¹. These principles have been implemented in recent environmental legislation. The objective of the Environmental Protection Act, adopted this year, is to improve citizen's opportunities to influence decisions concerning the environment. The 1999 Land Use and Building Act aims at ensuring transparency and public participation, at achieving high quality and interactive planning and comprehensive expertise.

Trade and Environment policy making

5. A number of intergovernmental committees and working groups are in place to formulate policies and prepare both national legislation and Finland's position in the EU and in international negotiations on trade and environment issues.

¹ See articles 12 and 20 of the Finnish Constitution. The text of the Constitution is published in English on the website of the Finnish Ministry of Justice, www.om.fi.

6. Following the UNCED Conference in Rio in 1992, the Finnish National Committee for Sustainable Development was set up to promote sustainable development in Finland and to act as an advisory body in related issues. The Committee is chaired by the Prime Minister. The Finnish Government Programme for Sustainable Development, adopted in 1998, is designed to promote ecological sustainability and the economic and social and cultural condition for achieving this objective ².

7. In 1992, the Working Group on Trade and Environment was established by the Ministry for Foreign Affairs. It acts as a working group of the Finnish National Committee for Sustainable Development and co-ordinates the Finnish position in relevant international bodies. This group met regularly until 1998, under the chairmanship of the Director for the Unit for Rules and Procedures Affecting Trade, of the Ministry for Foreign Affairs, and was overtaken by the structures put in place after Finland's accession to the European Union in 1995.

8. A number of inter-ministerial committees or "sections" have been established in which Finland's position on the different issues to be discussed and decided in the EU Council is formulated and drafted. These include both trade and environment issues. Each of these committees is composed of officials from the relevant ministries; responsibility for drafting a position rests with the competent ministry, which then submits it to the relevant committee for discussion. If the committee does not agree on a position, the matter is brought forward to the Committee for EU Affairs. If this Committee, composed of representatives of various ministries at Secretary of State level, does not reach an agreement either, the matter is brought to the Ministerial Committee for EU Affairs for decision.

9. Once a position has been agreed, the latter is submitted to the Parliament. The Parliament considers all acts, agreements and other measures which are to be decided at the European Union level and which otherwise would fall within the competence of the Parliament. The consultation is done through the Grand Committee, which is in charge of European Affairs and issues a binding decision on the proposal to the Government. The final Finnish position is then brought forward to the EU Council.

10. Of these inter-ministerial committees, the one that meets most frequently (once per week) is that dealing with trade issues in preparation of the EU's "133 Committee", called 133 Committee as well (hereinafter: "Finnish 133 Committee"). It is composed of representatives of the Ministries for Foreign Affairs, Trade and Industry, Environment, Finance, Agriculture and Forestry and other relevant ministries, depending on the agenda and the subjects under discussion. Another of these groups is the "Environment Committee", which meets before each meeting of the EU Environment Council, and between meetings when necessary (approximately 8 times per year).

Transparency

11. Transparency has been part of Finland's policy for many years. Until recently, access to official documents was regulated by the 1952 Act on Publicity of Official Documents, which has been replaced by the Act on the Openness of Government Activities of 1999. The goal of the reform was *"to increase the openness of government activities, to enhance the implementation of the openness principle relating to*

² This is Finland's third comprehensive document outlining national measures to be taken to promote sustainable development. A report entitled "Sustainable Development and Finland" was presented by the Council of State to the Parliament in 1990. In 1995, a second report, called "Finnish Action for Sustainable Development" was prepared by the Finnish National Commission on Sustainable Development.

these activities and to improve the possibilities to participate in the public debate and to influence the management of common issues"³.

12. The Act on the Openness of Government Activities provides that official documents are in the public domain unless specifically otherwise provided for. Under the Act, access to a document is the rule, and secrecy or restriction of such access must be duly justified⁴. The Act has a broad scope, and thus applies not only to documents (both in paper and electronic form) held by state administrative authorities and agencies, courts and municipal authorities, but also to State enterprises (such as the Forest Administration), and documents in the possession of private parties performing public authority (such as work pension institutes).

13. The Act applies both to information concerning decisions taken and to preparatory documents, which enter the public domain at the latest when the decision has been made. Authorities are responsible for having available information on legislation being drafted and on other pending projects of general importance. Under the Act on the Openness of Government Activities, public authorities are under the obligation to promote the practical implementation of the right to information, and they have to assist those requesting information to find it. The authorities therefore have to ensure that documents central to their activity are easily available. They also have to produce information on their activities and make it available (e.g., publications describing these activities, statistics, a register of decisions made, etc.). Access is to be granted as quickly as possible, and, as far as possible, in the manner requested (e.g., in paper or electronic form). Moreover, when planning or implementing reforms, the authorities have to ascertain and take into account rights relating to access to information. The provision of documents (delivered on paper or electronically) may be subject to a charge.

14. Finland promotes transparency not only at the national level, but also at EU level. In particular, Finland encouraged increased transparency during its EU Presidency in 1999, one of the main messages being that "*transparency clarifies the political choices made at Union level, stimulates broad public debate and generates approval for decisions*"⁵.

Consultation

Formal standing mechanisms

15. All ministries dealing with trade and environment issues involve civil society when drafting legislation or preparing Finland's position in international negotiations. Such involvement takes place however at a more or less advanced step of the process.

16. The above mentioned Working Group on Trade and Environment set up by the Ministry for Foreign Affairs, which was very active between 1992 and 1998, is composed of representatives of the

³ See the webpage of the Finnish Ministry of Justice; www.om.fi. The section of this report dealing with the Act on the Openness of Government Activities is extracted from this webpage.

⁴ The provisions on secrecy protect important private and public interests such as international relations, the prevention and prosecution of crime, security arrangements, State security, income, financial, monetary and currency policy, protection of natural values, etc.

⁵ See www.presidenty.finland.fi.

Ministries for Foreign Affairs, Environment, Trade and Industry, Agriculture and Forestry, as well as representatives of industry and forestry, and environmental and other NGOs ⁶.

17. In 1995, the Working Group prepared a set of "Guidelines on Trade and Environment", which outlined Finland's basic positions on issues such as the relationship between multilateral environmental agreements (MEAs) and the WTO, processes and production methods (PPMs), recycling and packaging requirements, eco-labelling, certification of origin of forest products, economic instruments for environmental protection, transparency, unilateral measures, and the role of different international organisations.

18. Several times per year, the "Finnish 133 Committee", dealing with trade issues in the EU context, meets in its broad composition, involving representatives of civil society, under the chairmanship of the Ministry for Foreign Affairs. It has the same function as the regular "Finnish 133 Committee", but meets only when substantial new issues need to be co-ordinated or in preparation of major international developments or events, such as the WTO Ministerial Conference in Seattle. This "broad committee" includes, besides officials from the relevant ministries, representatives of various sectors of industry (chemical industry, forestry, metals, food industries, textiles), services (banking, insurance), business, farmers, consumers, environmental NGOs, trade unions, etc.

19. In view of the expected launch of a new round of negotiations under the WTO, six sub-committees to the "Finnish 133 Committee" were established, covering services, agriculture, market access, WTO rules, new issues and TRIPS. Trade and environment issues are dealt with in the "Sub-committee on new issues", which has largely taken over from the Working Group on Trade and Environment, and also includes representatives of civil society, such as environmental groups. The sub-committees can be further divided into smaller working groups, dealing with specific subjects.

20. The negotiation of multilateral environmental agreements also increasingly involves civil society representatives, through participation in advisory bodies, together with representatives of the relevant ministries. An example is the advisory body to the Ministerial Group for the Intergovernmental Forest Process, which involves relevant sectors of society, such as private forest owners and environmental groups. This advisory body has been involved from the beginning in the process of negotiations within the International Forum of Forests.

21. Similar bodies are constituted for negotiations related to climate change, and more recently, the Kyoto Protocol, and the conferences of parties to various MEAs. In the field of climate change, the Ministry of the Environment is responsible for the preparation of the Finnish positions for international climate negotiations whereas the Ministry of Trade and Industry leads the preparations of the national action programme in the field of Kyoto mechanisms. The Minister of Trade and Industry also chairs the ministerial co-ordination group in the field of climate change. In addition, other relevant ministries lead specialised working groups which contribute to the process.

22. Development co-operation, under the Ministry for Foreign Affairs, also involves stakeholders at the various phases of a project, both at the policy development level and in the implementation phase. Consultation takes place through the Advisory body on Finnish relations with developing countries, a Parliamentary Committee in which KEPA, an umbrella NGO for development issues, takes part, as well as scholars, development institutes, etc. This advisory body recently set up a sub-group on global economic issues, including various stakeholder representatives, dealing with issues related to WTO, IMF, the World Bank, etc. It has also organised seminars and workshops for a broader public.

⁶ The Working Group on Trade and Environment still exists, but serves mainly as a mailing list and a channel for distribution of information.

23. NGOs are regularly part of the Finnish Delegation at international meetings, such as MEA negotiations, the WTO Ministerial meeting in Seattle, UNCTAD X and the recent meeting of the Commission for Sustainable Development.

24. The preparation of environmental legislation and policies involves, from the outset, members of civil society. Often, a working group is set up to prepare a draft proposal. Usually, such working group includes, besides civil servants from the Ministry of the Environment and other relevant ministries, representatives of civil society, ranging from industry to environmental and development groups, consumers, trade unions, etc. Often, the actual drafting work is preceded by a workshop, a conference or a seminar on the subject to be covered by the draft, to which a large group of stakeholders are invited. Such seminars were held for example in preparation of the 6th EU Environmental Action Plan, and the formulation of the Environmental Protection Act. The proposal made by the working group is circulated for comments to other ministries, governmental agencies, as well as a broad range of stakeholders.

25. In addition to the Finnish Government Programme for Sustainable Development mentioned earlier, the central association of local authorities, trade and industry organisations, agricultural producers and forest owners, the *Sámi* Parliament and numerous NGOs have drafted their own programmes of sustainable development. A rapidly increasing number of local authorities and regions have likewise prepared their own programmes⁷. Projects for sustainable development are currently in progress in around 250 municipalities, accounting for 80% of the Finnish population.

26. In the last years, several inter-ministerial groups have been created to deal with biotechnology and food safety issues, both at national and international level (e.g., in the framework of the Codex Alimentarius). Information and consultation meetings are held several times per year with various advisory bodies (the Advisory Board for Food Matters and the Advisory Board for Biotech) in which representatives of consumers, farmers, environmental NGOs, the food industry etc. take part. Recently, an ad hoc group with NGO representation was established to formulate Finland's position for the amendment of the EU Directive on genetically modified organisms.

27. The Parliament, and its diverse Committees (such as the Grand Committee, in charge of EU Affairs, or the Environment Committee) play a crucial role in the decision making process, and in the involvement of civil society views in such process. Members of Parliament have the right to be informed at every level of the process, and to carry out hearings and consultations before issuing a decision. This includes consulting those representatives of civil society it deems useful, regardless of whether they had taken part or not in the process leading to the project on which it is being consulted. By custom, Parliament staff has the duty to assist those wishing to express their views to the Parliament in formulating such opinion.

Formal ad hoc mechanisms

28. In addition to meetings with relevant stakeholders, ministries regularly make use of written procedure consultations to obtain comments from civil society representatives on draft proposals.

29. Ad hoc consultations within working groups involving civil society take place also on issues other than legislative processes or international negotiations. The Ministry of Trade and Industry for example submits a draft of its annual Trade Policy Review to stakeholders for observations.

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The information on sustainable development in Finland contained in this report is based on the "Country experience report on the promotion of sustainable development and on national councils for sustainable development", submitted to the Earth Council by the Ministry of the Environment of Finland, April 2000.

30. Stakeholders are also involved in environmental impact assessments of policies and projects. The purpose of the 1994 Act on Environmental Impact Assessment Procedure is to "*promote uniform consideration of environmental assessment in planning and decision-making and to increase public dissemination of the related information, and people's opportunity to influence decision-making*"⁸. The Act provides that when an authority prepares a plan, programme or policy whose implementation is likely to have a significant effect on the environment, its impact must be assessed. This applies to all kinds of policies, including policies on taxation, payments, subsidies, administrative and financial planning, regional development plans, etc. Environmental assessment involves participatory planning and co-operation, the main parties of the process being those authorities, interest groups and citizens that are affected by the implementation of the plan, programme or policy, are responsible for its implementation or have special expertise in the field concerned. Participation typically includes public meetings and consultations at the various stages of the assessment procedure.

31. Civil society plays an important role in forestry related issues⁹. The formulation of the Finnish Forest Certification System (FFCS), which became operational in 1999, involved a large range of stakeholders (industry, private forest owners organisations, state forestry, educational and research institutions, forest entrepreneurs, trade unions, environmental and social NGOs¹⁰). Information on the progress of the process was available to interested parties; and several seminars were organised at national and local levels¹¹.

Informal mechanisms

32. Among the informal mechanisms are the organisation of public seminars and workshops on issues in the public debate, such as climate change, the MAI, etc. Some of these seminars are organised in the framework of the "Finnish 133 Committee", one of the objective being to allow the presence of the relevant Minister at the seminar. While these seminars often have a precise agenda (e.g., the new WTO round), participants can take up any pertinent trade and environment related issue. Public seminars have also been organised on the occasion of the visit of high level representatives of international institutions to Finland, such as, recently, Sir Leon Brittan and Mr. Ruggiero.

33. The Internet has greatly facilitated the implementation of the transparency principles and obligations set out in the Constitution and in the Act on Openness of Government Activities¹². A large amount of documentation is available on the webpages of the different ministries (to a large extent also in English). In addition, ministries produce brochures, leaflets and publications on their activities and relevant programmes and projects. These are easily available to the public, and generally distributed for free.

⁸ "*Guidelines for the environmental assessment of plans, programmes, and policies in Finland*", Ministry of the Environment, 1999.

⁹ Forests are Finland's most important natural resource in economic terms, and most of the country is covered in naturally regenerated forest in commercial use. 62 % of forestland is privately owned, there are around 440 000 private forest owners in Finland. See "*Finland's Natural Resources and the Environment*", Ministry of the Environment, 1999.

¹⁰ The environmental NGOs withdrew from the development process in 1998 and committed themselves to promoting another forestry scheme, that of the Forestry Stewardship Council.

¹¹ See "*Finland's Natural Resources and the Environment 1999*" and "*Caring for our Forests*", Finnish Forest Certification Scheme.

¹² The rate of Finnish households with an Internet connection (around 60%) is one of the highest in the world. In addition, access to the Internet is possible in schools, public libraries, etc.

34. The use of electronic mail has made decision-makers, whose professional e-mail addresses are public, much more accessible to the public. Direct contact with Members of Parliament and Government officials through e-mail is increasingly becoming a means of expressing one's views and soliciting opinions. Direct contacts are also relatively easy, and the names and telephone numbers of officials are published, e.g. on information brochures. Informal personal contacts between NGO representatives and government officials, as a result of individual acquaintance, are also a very common channel of communication.

Beneficiaries

35. The Finnish authorities consider themselves open towards all relevant NGOs, and do not favour one, or one type of NGOs, as compared to another. Being a small country, stakeholders are easily identified and invited to consultations. New stakeholders are integrated in the process without any difficulties or formalities.

36. Officials acknowledge that differences among civil society groups exist as regards their level of resources (staff and financial resources), and expertise, and that this can have an impact in consultation processes. Certain NGOs such as business and industry representatives with sufficient own funds do not receive financial assistance from the Government. Other, less well-resourced groups receive regular government funding¹³. In addition, they occasionally receive financial assistance from the government to facilitate their participation at international meetings as part of the Finnish Delegation.

37. The administration allocates funds to finance projects by NGOs, in particular, on development issues. The Ministry for Foreign Affairs considers NGOs to have a central role in strengthening awareness on global responsibility within the Finnish society. Government co-operation with NGOs on development projects aims primarily at strengthening the capacity of local non-governmental organisations and civil society in general, thereby promoting the principles of pluralistic societies and the foundations of democracy. Current projects related to trade and environment financed by the Ministry for Foreign Affairs include one related to the establishment of a "fair trade label". The Ministry of the Environment also provided a financial contribution to WWF/Futuro Latino-Americano for the organisation of the meeting on Sustainability Assessment of Trade Liberalisation, in Ecuador, in March 2000.

Experience with transparency and consultation

38. Transparency and public consultation are considered highly important and essential for the decision-making process both by the administration and civil society representatives. It was generally recognised that Finland is traditionally a "consensual country", and that normally efforts are made to avoid confrontations and reach compromise positions. Public interest in trade and environment issues is relatively recent, and both government officials and civil society representatives commented that transparency and consultation in general, but in particular on these issues, is part of a learning process, and that progress is made as things evolve.

39. NGOs consider certain ministries more "open" than others. The Ministry of the Environment has a long tradition of public consultation with environmental groups and other stakeholders. The Ministry of Trade and Industry has maintained good direct contacts with industry and labour representatives for a long time, and is starting to involve other stakeholders in its work. The Ministry for Foreign Affairs was

¹³ KEPA for example receives 95% of its budget from public funds.

considered by a representative of a development NGO to be more impermeable to NGO input, but he acknowledged that the situation has improved in the past years.

Assessment

Transparency

40. The requirements imposed by the Act on Openness of Government Information, in particular, the active promotion of information to the public, are not perceived as a significant additional burden of work by government. Officials from the Ministry of Trade and Industry considered that a possible improvement of transparency would be that civil servants publish more in the press on issues related to their activities, but that this is often not possible due to time constraints.

41. Civil society representatives were also generally satisfied with the level of transparency. Representatives of a development and an environmental NGO however pointed out that the level of transparency varies depending on the kind of instrument under discussion: there is transparency in relation to non binding statements and recommendations, but it is insufficient in processes leading to binding international trade and investment rules. They mentioned however that while final documents are easily accessible, it is difficult to obtain drafts during the decision making or negotiation process. Further, it was mentioned that in international or EU processes, it is often easier to obtain relevant documents through international secretariats than from national sources. This is however due to the fact that these documents are classified by the relevant international bodies, which have their own practice with regard to disclosure of drafts to NGOs.

Consultation

42. Government representatives generally consider the existing consultation mechanisms to be satisfactory, though the difficulties caused by tight deadlines were acknowledged.

43. In their view, public consultation makes their own work easier, and it helps avoiding problems, if the people's views are known and taken into account when developing policies or preparing negotiations. As regards the quality of the contribution of civil society representatives, the latter are generally considered to be knowledgeable, responsible, generally well prepared, to have good ideas, and their input to be useful.

44. Business and industry, as well as trade union representatives, expressed their broad satisfaction with the current consultation mechanisms and procedures. They praised in particular the easy access to government officials and the effectiveness of informal contacts. Representatives of environmental and development NGOs were more critical.

45. One recurrent remark was that drafts for comments through written procedure, or for discussion in meetings were often provided too late to allow for a significant input, in particular, where numerous consultations take place in a short period of time. It was however acknowledged that this is often due to the fact that government officials themselves receive documents (e.g. from the EU or in the framework of international negotiations) at a late stage and are themselves subject to tight deadlines.

46. Some NGOs representatives said that they are now taking a more proactive approach, and provide their views or position in advance, without awaiting a draft for comments. NGOs commented that there is generally no, or little feedback, from the administration on their position or input. The representative of an environmental NGO commented that he had received no reply from officials to whom he had sent written questions on trade and environment implications.

47. NGOs also mentioned that civil society is sometimes involved in the process too late, when it is unlikely that any suggestions for modifications will be taken into account due to time constraints. This affects not only NGOs: it was mentioned that often, when consulted on draft positions on issues to be decided at EU level, or in the framework of international negotiations, Parliament is not given enough time either to properly consider the texts. An example quoted were the WTO agreements. It was suggested that the national dialogue prior to important international commitments should be improved.

48. It was also said that, occasionally, sectors of civil society are unequally involved in consultations. A recent example is the revision of export credit legislation, on which environmental NGOs were consulted once a draft was well advanced, whereas industry and business representatives were part of the process from the outset. The competent authorities acknowledged that this had been a mistake.

49. NGOs considered membership in Finnish Delegations to international meetings very useful and enriching, though their role within the delegation is sometimes ambiguous. For example, an NGO representative mentioned that his report on a recent international meeting in which he participated as member of the Delegation was not integrated in the Delegation's report, but annexed to it.

50. It was also mentioned, both by civil servants and NGOs representatives, that trade and environment issues and related subjects are often very complex, and the implications not easy to understand for a majority of people, including civil society representatives, but also, i.a., officials and Members of Parliament. This, together with time constraints, can hamper the effectiveness of consultation processes. Some NGO representatives commented that on certain issues, such as the MAI negotiations, officials had not anticipated the implications of the proposals under debate, and that NGOs had raised public awareness, as well as that of the government and Parliament.

51. Both civil society representatives and ministry officials praised the importance and value of personal contacts to obtain information and opinions, to influence and informally participate in the decision making process.

52. Environmental and development NGOs considered that certain stakeholders, in particular business and industry representatives, could exert great influence through direct, informal contacts. On the other hand, business and industry representatives considered that environmental and development NGOs had a very good access to the press and could exert pressure on the government through the media.